

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #96-03A**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Sales and use tax liability on transfers of and charter income from 1980 Model 35A Lear Jet aircraft registration mark [NUMBER].

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

[COMPANY X] purchased a 1980 Model 35A Lear Jet aircraft (“the aircraft”) from [COMPANY Y]. [COMPANY X] issued its resale certificate to [COMPANY Y]. Immediately after purchasing the aircraft from [COMPANY Y], [COMPANY X] “assigned” its interest in the plane to [COMPANY Z]. [COMPANY Z] issued its resale certificate to [COMPANY X]. [COMPANY Z] took delivery of the aircraft in [STATE A-NOT TENNESSEE] and has stationed the aircraft in Tennessee. The aircraft was subsequently leased by [COMPANY Z] to [COMPANY W]. [COMPANY W] provides a charter service to the public. [COMPANY W] is regulated by the Federal Aviation Administration (FAA) and holds an Air Carrier Certificate from the FAA. [COMPANY W]’s “operations specifications” filed with the FAA authorizes it to operate in the 48 contiguous United States, as well as in a number of foreign countries. At least 90% of the actual use of the aircraft will be for travel to points outside of Tennessee. In providing the charter service to its customers, [COMPANY W] maintains continuous supervision of the aircraft and furnishes the pilot and crew to operate the aircraft while in service.

ISSUES

1. Is the sale of the aircraft by [COMPANY Y] to [COMPANY X] subject to Tennessee sales or use tax?

2. Is the transfer of the aircraft by [COMPANY X] to [COMPANY Z] subject to Tennessee sales or use tax?
3. Is [COMPANY W] required to collect sales or use tax from its customers when [COMPANY W] furnishes a pilot and crew who will maintain continuous supervision of the aircraft?

RULING

1. No Tennessee sales or use tax is due on this transaction.
2. No Tennessee sales or use tax is due on this transaction.
3. [COMPANY W] is not required to collect or pay Tennessee sales or use tax when the aircraft is provided to the customer in this type of transaction.

ANALYSIS

The sales and use tax is levied on sales at retail, T.C.A. § 67-6-202. “Sales at retail” as defined by T.C.A. § 67-6-102(23)(A) excludes sales for resale, as long as there is strict compliance with rules and regulations regarding sales for resale. The appropriate regulations are found at Tenn. Comp. R. & Regs. 1320-5-1-.62 and 1320-5-1-.68. These regulations require a sale to a bona fide dealer engaged in the sale of the type of property being purchased, the issuance of a certificate of resale by the purchaser to the seller, and a requirement that the seller does not know (or should not know in the use of ordinary care) that the goods being sold are not for resale.

The transfer between [COMPANY Y] and [COMPANY X] would not be taxable, because the sale took place outside of Tennessee and the purchaser’s ([COMPANY X]’s) interest in the aircraft was transferred prior to the aircraft’s entering Tennessee.

The transaction by which [COMPANY X] transferred the aircraft to [COMPANY Z] is described as an “assignment of interest.” For the purposes of this ruling, it is assumed that the “assignment” is a sale. T.C.A. § 67-6-102(24)(A) includes in “sale” any transfer of title or possession, or both, for consideration.

[COMPANY Z] will be engaged in leasing the aircraft. A lessor or renter of property in acquiring property to be leased or rented may issue a certificate of resale under the provisions of Tenn. Comp. R. & Regs. 1320-5-1-.32(3). Therefore, [COMPANY Z] properly acquired the aircraft free of tax by issuing a certificate of resale to [COMPANY X].

[COMPANY W] provides a charter service. [COMPANY W] will provide aircraft and operator, and maintain continuous supervision and control, when it provides this service to its customers. This is not a lease or rental, under the provisions of T.C.A. § 67-6-204(b), which provides that “[i]f the owner of the property maintains continuous supervision over the personal property being leased or rented, and furnishes an operator or crew to operate such property, the owner is rendering a service, and the same is not

subject to sales tax.” Therefore, [COMPANY W] is not liable for sales tax on its receipts from its charter operations, where both aircraft and crew are provided to its customers.

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DATE: 1-5-96